

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAUL M. ESPITIA,	:	Case No. C-1-00-531
	:	
Plaintiff,	:	Judge Herman J. Weber
	:	
v.	:	
	:	
THE PROCTER & GAMBLE	:	DEFENDANT THE PROCTER & GAMBLE
COMPANY, et al.,	:	COMPANY'S MOTION TO REVIEW THE
	:	CLERK'S TAXATION OF COSTS
Defendants.	:	

On July 9, 2004, the Clerk disallowed costs for the following depositions, which it concluded were not filed with the Clerk in the course of the litigation:

Deposition of Raul Espitia in the amount of	\$1,544.53
Deposition of Michael Lindsey in the amount of	\$ 279.00
Deposition of Dwain Carver in the amount of	\$ 159.30
Deposition of Tom Winters in the amount of	\$ 114.00
Deposition of J. Scarcella in the amount of	\$ 99.90
Deposition of N. Bess in the amount of	\$ 105.00

However, the depositions of Plaintiff Raul Espitia, Michael Lindsey, Dwain Carver, and Tom Winters were all necessarily obtained for use in the case, cited extensively in connection with Defendant Procter & Gamble's ("P&G") Motion for Summary Judgment, and were filed with the Court as attachments to P&G's Motion for Summary Judgment, Docket No. 21. The deposition of Raul Espitia was attached as Exhibit A; the deposition of Michael Lindsey was attached as Exhibit I; the deposition of Dwain Carver was attached as Exhibit L; and the deposition of Tom Winters was attached as Exhibit H. (A copy of P&G's Motion for Summary Judgment and

Memorandum in Support, which contains references and citations to the depositions which were attached as exhibits is attached as Exhibit A).

S.D. Ohio Civ. R. 7.2(f) provides that evidence presented in support of any motion, including depositions, “shall be attached to the memorandum” The depositions were all filed as exhibits to P&G’s Motion for Summary Judgment, rather than as separate documents filed with the Clerk. Plaintiff also relied extensively on his deposition transcript in his Memorandum in Opposition to P&G’s Motion for Summary Judgment. (See Docket No. 30 at pp. 1-16). In addition, the deposition testimony of the Plaintiff was relied upon by both parties in its briefs in the Sixth Circuit Court of Appeals. (Appellant Raul Espitia’s Designation of Appendix Contents is attached as Exhibit B; Appellee P&G’s Designation of Appendix Contents is attached as Exhibit C). Therefore, because the deposition transcripts of Raul Espitia, Michael Lindsey, Dwain Carver and Tom Winters all were necessarily obtained for use in the case, filed with the Court, and cited extensively. P&G is entitled to recover costs of the amount of \$2,096.53 for the depositions of these individuals.

While the depositions of Jim Scarcella and Nancy Bess were not cited in either party’s memoranda, both depositions were noticed by Plaintiff. (Copies of the Notices of Depositions for Nancy Bess and Jim Scarcella, and the subpoena for Nancy Bess are attached as Exhibit D). Because Plaintiff specifically requested to take each of these depositions, Plaintiff should be taxed for their costs as copies necessarily obtained for use in the case.

Accordingly, P&G respectfully requests that the costs disallowed in the amount of \$2,301.73 be awarded to P&G as fees for exemplification and copies of papers necessarily obtained for use in the case.

Respectfully submitted,

/s/ Michael S. Glassman, Esq.
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Attorney for Defendant
The Procter & Gamble Company

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2004 I electronically filed the foregoing using the CM/ECF system which will send notification of such filing to Kelly Mulloy Meyers, Esq., Freking & Betz, 215 East Ninth Street, Fifth Floor, Cincinnati, Ohio 45202 and James B. Robinson, Esq. Kircher Robinson & Welch, 2520 Kroger Building, 1014 Vine Street, Cincinnati, OH 45202-1116.

/s/ Jennifer K. Swartz, Esq.

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